

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 11898
of 2023**

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DASHRATHSINH DILIPSINH PARMAR

Versus
STATE OF GUJARAT

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Appearance:

MR RUTVIJ S OZA(5594) for the Applicant(s) No. 1

for the Respondent(s) No. 1

MR RJ GOSWAMI(1102) for the Respondent(s) No. 1

MR HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 29/09/2023

ORAL ORDER

Mr.R.J. Goswami, learned advocate states that he has instructions to appear on behalf of respondent No.2-original complainant. He is permitted to file his appearance.

1. By way of the present application under Section 438 of the Code of Criminal Procedure, 1973, the applicant accused has prayed to release him on anticipatory bail in the event of his arrest in connection with the **FIR being CR No.11191015230376 of 2023** registered with Nikol Police Station, Dist. Ahmedabad for the offences punishable under Sections 384, 387, 294(b), 506(1) and 114 of the Indian Penal Code and Section 5, 33(3), 40 and 42 of the Gujarat Money Lenders Act.

2. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. Besides, the applicant is available during the course of investigation and will not flee from justice. Learned advocate for the applicant

has submitted that the present applicant is falsely implicated in the offence. He has nothing to do with an offence. It is further submitted that in the complaint, it is alleged by the complainant that her husband left the house because of mental and physical torture by the accused persons. It is further submitted that during the corona period, due to financial crunch, he had taken the amount from the accused persons from high rate of interest. The said amount has been paid timely but since last three months he was not in a position to pay the same to the accused. Therefore, the accused persons has tortured and demanded high interest and he has left no option. It is further submitted that the present applicant has demanded high amount of Rs.15,00,000/- with the higher rate of interest @ 10% per month in the guise of grab his brother is serving as a Police Inspector in the Crime Branch. He has further submitted that allegations are totally baseless and false. It is submitted that the complainant is running row savings scheme, wherein the present applicant and other people have also deposited the money and the said amount is being asked to pay to the present applicant and the said fact has given criminal colour. It is further submitted that nothing is required to be recovered and discovered from the accused. Learned advocate for the applicant, under the instructions, has submitted that he is ready and willing to join the investigation. In view of the above, the applicant may be granted anticipatory bail.

Learned advocate for the applicant, on instructions, states that the applicant is ready and willing to abide by all the conditions including imposition of conditions with regard

to powers of Investigating Agency to file an application before the competent Court for his remand. He would further submit that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open.

3. Learned Additional Public Prosecutor appearing on behalf of the respondent - State and learned advocate appearing for the complainant have opposed grant of anticipatory bail looking to the nature and gravity of the offence.

4. Learned APP has stated that *prima facie*, involvement of the present applicant is revealed. The amount is lended with the high rate of interest and the same is not returned. Due to this, the said incident took place and the note is also left by the complainant and the present application is based on the said note. It is submitted that investigation is at preliminary stage. Hence, custodial interrogation is required and he has requested to dismiss the present application.

5. Learned advocate for the original complainant has stated that present applicant is involved in the offence and he has threatened the present complainant, then, her husband is compelled to left the vicinity and the applicant demanded huge amount with high interest @ 10 % p.m. Considering the aforesaid fact, the complainant compelled to file the complaint. It is submitted that investigation is at preliminary stage. Hence, custodial interrogation is required and he has requested to dismiss the present application.

4. Having heard the learned advocate for the parties and perusing the investigation papers, it is equally incumbent upon the Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Hon'ble Apex Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided. I have considered the following aspects.

(i) going through the complaint and the allegations levelled in the complaint, *prima facie*, it appears that there is some row saving scheme between the complainant and accused and the amount being deposited and as per the say of the learned advocate for the applicant, the said amount came to be demanded by the accused thereon.

(ii) During the pendency of the investigation, it reveals that no one is serving in the Police Department and Crime Branch;

(iii) nothing is required to be recovered and discovered from the applicant;

(iv) offence is not punishable with life or death;

(v) applicant has shown his willingness to co-operate and participate in the investigation;

(vi) This Court has taken care of custodial interrogation of applicant as right to seek remand of applicant is also kept open.

5. Considering the aforesaid aspects and the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors.** reported in **(2011) 1 SCC 6941**, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors.** reported in **(1980) 2 SCC 665** and also the decision in the case of **Sushila Aggarwal v. State (NCT of Delhi)** reported in **(2020) 5 SCC 1**, I am inclined to allow the present application.

6. In the result, the present application is allowed by directing that in the event of applicant herein being arrested

in connection with the **FIR being CR No.11191015230376 of 2023** registered with Nikol Police Station, Dist. Ahmedabad, the applicant shall be released on bail on furnishing a personal bond of **Rs.10,000/- (Rupees Ten Thousand Only)** with one surety of like amount on the following conditions that he:

- (a) shall cooperate with the investigation and make himself available for interrogation whenever required;
- (b) **shall remain present at the concerned Police Station on 05/10/2023 between 11.00 a.m. and 2.00 p.m. and the IO shall ensure that no unnecessary harassment or inconvenience is caused to the applicant;**
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the Court and if having passport shall deposit the same before the Trial Court within a week; and
- (g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it

on merits;

7. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.
8. At the trial, the Trial Court shall not be influenced by the *prima facie* observations made by this Court while enlarging the applicant on bail.
9. Rule is made absolute to the aforesaid extent. Application is disposed of accordingly. Direct service is permitted.

KUMAR ALOK

(HASMUKH D. SUTHAR,J)